

JOHN S. PURCELL (SBN 158969)
john.purcell@afslaw.com
SARA T. SCHNEIDER (SBN 298103)
sara.schneider@afslaw.com
JESSICA B. DO (SBN 317517)
jessica.do@afslaw.com
ARENTEFOX SCHIFF LLP
555 West Fifth Street, 48th Floor
Los Angeles, CA 90013
Telephone: 213.629.7400
Facsimile: 213.629.7401

Attorneys for Defendant
SYNAPSE GROUP, INC. d/b/a
MAGSFORMILES AND MAGSFORPOINTS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBERT BARGAR, Individually and
On Behalf of All Others Similarly
Situated,

Plaintiff,

V.

SYNAPSE GROUP, INC. d/b/a
MAGSFORMILES and
MAGSFORPOINTS,

Defendant.

Case No. 8:23-CV-00198-CJC-JDE
Honorable Cormac J. Carney

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF DEFENDANT'S
MOTION TO TRANSFER
VENUE**

[Filed concurrently with Notice of Motion and Motion to Transfer Venue; Declaration of Tracy Dart; and Proposed Order]

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MEMORANDUM OF POINTS AND AUTHORITIES

2

3

I. **INTRODUCTION**

4

5 Plaintiff Robert Bargar agreed to redeem surplus airline miles in exchange
 6 for magazine subscriptions pursuant to reward programs administered by Defendant
 7 Synapse Group, Inc. d/b/a MagsForMiles and MagsForPoints (“Synapse”). Plaintiff
 8 claims that Synapse breached this agreement by offering substitute digital magazine
 9 subscriptions when the print magazine titles he had selected became unavailable.
 10 He asserts class claims for breach of contract, unjust enrichment, and violation of
 various California consumer statutes.

11 Plaintiff’s election to file suit in this Court runs afoul of the forum-selection
 12 clause incorporated into the agreement with Synapse on which he is suing. The
 13 relevant provision provides: “Any disputes arising under these Program Details and
 14 Terms of Use will be governed by New York law. You hereby consent to the
 15 exclusive jurisdiction of the state and federal courts located in New York County,
 16 New York for any such purposes.” The broad scope of this provision encompasses
 17 Plaintiff’s claims, all of which are premised on Synapse’s alleged failure to fulfill
 18 its contractual obligations to him.

19 Plaintiff cannot avoid enforcement of the forum-selection clause. First, he
 20 was, at minimum, on constructive notice of the Program and Delivery Details that
 21 incorporate the forum-selection clause because his claims presume that the specifics
 22 of the program’s delivery of magazines were material to the transaction. As such, a
 23 reasonably prudent consumer in his position would have clicked on the conspicuous
 24 Program and Delivery Details link on the webpages that he visited no less than
 25 eighteen times to place orders during the relevant time frame. Second, his reliance
 26 on the delivery details as material terms further serves as a judicial admission that
 27 the Program and Delivery Details (including the forum-selection clause) were part

28

1 of the enforceable agreement between him and Synapse that forms the basis of his
 2 breach of contract claim.

3 The Supreme Court has made clear that valid forum-selection clauses such as
 4 this one must be enforced absent extraordinary circumstances. *See Atlantic Marine*
 5 *Construction Co. v. U.S. District Court for Western District of Texas*, 571 U.S. 49
 6 (2013). Because no such circumstances are presented here, this Court should grant
 7 Synapse’s motion and transfer this case to the United States District Court for the
 8 Southern District of New York.

9 **II. RELEVANT FACTUAL BACKGROUND**

10 Synapse is a leading marketer of magazine subscriptions in the United States.
 11 Declaration of Tracy Dart in support of Defendant’s Motion to Transfer Venue (the
 12 “Dart Decl.”), ¶ 3. Synapse has a principal place of business in Connecticut. First
 13 Amended Class Action Complaint for Damages and Injunctive Relief (“FAC”)
 14 [Dkt. 12], ¶ 13. Plaintiff is a citizen of California and resident of Orange County.
 15 FAC, ¶ 12.

16 Synapse operates customized marketing programs spanning multiple
 17 channels, including retailers, airlines, direct response and internet companies. Dart
 18 Decl., ¶ 3. Synapse’s airline partners include, among others, United Airlines, Inc.
 19 (“United”). *Id.* Synapse offers its airline partners, such as United, two customized
 20 marketing programs, commonly referred to as MagsForMiles (“MFM”) and
 21 MagsForPoints (“MFP”). *Id.*, ¶ 4. MFM invites frequent flyer members to redeem
 22 their unused, orphan, or expiring miles for popular magazines. *Id.*; FAC, ¶ 1.
 23 Similarly, MFP invites rewards program members to redeem their unused, orphan
 24 or expiring points for popular magazines. *Id.*; FAC, ¶ 2.

25 Plaintiff is a member of United’s MileagePlus program. FAC, ¶ 15. Plaintiff
 26 received advertisements from MFM and MFP offering to exchange his United
 27 miles and/or points for magazine subscriptions. *Id.*, ¶ 16. Beginning on September
 28

1 4, 2020, and continuing through August 12, 2021, Plaintiff placed a number of
 2 orders through his United MileagePlus account for subscriptions to various print
 3 publications, in particular *Eating Well*, *Entertainment Weekly* and *InStyle*
 4 magazines (together, the “Print Publications”). *Id.*, ¶ 17; Dart Decl., ¶ 5. Synapse’s
 5 records indicate Plaintiff placed his orders for the Print Publications online. Dart
 6 Decl., ¶ 6; Ex. A.

7 In order to place the online orders for the Print Publications, Plaintiff
 8 navigated through a series of webpages, including the initial offer from Synapse, a
 9 subsequent payment screen, and an order confirmation page with additional offers.
 10 Dart Decl., ¶ 6; Ex. B. As depicted in the order flow attached as Exhibit B,
 11 Plaintiff was first presented with an initial offer page prompting him to “Use your
 12 United MileagePlus miles now” and presenting him with a number of publications
 13 he could select and add to his cart based on available airline miles. Dart Decl., ¶ 6;
 14 Ex. B at 2. Once finished adding publications to his cart, Plaintiff then scrolled
 15 down to the “Checkout” button at the bottom of the landing page. Immediately
 16 below the “Checkout” button are four hyperlinks, including Synapse’s Program and
 17 Delivery Details. Clicking the “Checkout” button to proceed to checkout took
 18 Plaintiff to the customer checkout page. *Id.* Again, the link to Program and Delivery
 19 Details appears just below the “Place Order” button on the checkout page. *Id.*, ¶ 6;
 20 Ex. B at 5, 6-8. Plaintiff had to proceed through the above steps in order to place
 21 his orders for the Print Publications. *Id.*, ¶ 6. At a minimum, the website presented
 22 the Program and Delivery Details link to Plaintiff twice each time he placed an
 23 order. *Id.*, ¶ 7. Synapse’s records reflect that Plaintiff placed nine orders between
 24 2020 and 2021 and, therefore, viewed the link to the Program and Delivery Details
 25 a minimum of eighteen times. *Id.*

26 Clicking on the hyperlink to Synapse’s Program and Delivery Details sends
 27 the customer to Synapse’s Program Details webpage. *Id.*, ¶ 8; Ex. B at 10. On that
 28

1 page, in a section entitled “**Website Information**,” Synapse states that “[a]s a user
 2 of MagsforMiles.com (the “Site”) and its services, you agree to be bound and abide
 3 by the Terms of Use that are explained here.” *Id.*

4 The Program Details page also contains a section entitled “**Governing Law**
 5 and **Jurisdiction**,” which states: “Any disputes arising under these Program Details
 6 and Terms of Use will be governed by New York law without reference to conflict
 7 of law principles. You hereby consent to the exclusive jurisdiction of the state and
 8 federal courts located in New York County, New York for any such purposes.” *Id.*,
 9 ¶ 9.

10 Plaintiff alleges that, after receiving several issues of the Print Publications,
 11 he received three postcards from Synapse in the Spring of 2022 notifying him that
 12 he would no longer receive these Print Publications, as they were no longer
 13 available, and providing Plaintiff with the option to select replacements from a list
 14 of different digital magazines. FAC, ¶¶ 18-20.

15 Plaintiff responded by filing this putative nationwide class action on
 16 February 1, 2023,¹ asserting claims against Synapse for breach of contract, unjust
 17 enrichment, and violation of California’s Consumer Legal Remedies Act
 18 (“CLRA”), Unfair Competition Law (“UCL”), and False Advertising Law
 19 (“FAL”). *See* Compl. [Dkt. 1]. On March 16, 2023, Plaintiff filed his FAC, adding
 20 claims for compensatory and punitive damages pursuant to the CLRA. [Dkt. 12].

21 Synapse now seeks to enforce the forum-selection provision contained in the
 22 Program Details and to transfer this action to the Southern District of New York per
 23 the parties’ agreement.

24 //

25 //

26

27 ¹ Plaintiff placed his tenth order with Synapse and redeemed his United miles for another
 28 subscription on January 16, 2023—just weeks before filing the instant lawsuit claiming, *inter*
alia, that Synapse defrauded him. Dart Decl., ¶ 5.

1 **III. ARGUMENT**

2 **A. Legal Standard**

3 A forum-selection clause in favor of another district court is enforced by a
 4 motion to transfer venue pursuant to 28 U.S.C. section 1404(a), which is the
 5 “codification of the doctrine of *forum non conveniens* for the subset of cases in
 6 which the transferee forum is within the federal court system.” *Atl. Marine Const.*
 7 *Co.*, 571 U.S. at 59-60. In deciding such a motion, a court must first “determine
 8 whether the forum-selection clause is valid” and then “evaluate the *forum non*
 9 *conveniens* factors as modified by *Atlantic Marine*.” *In re CytRx Corp. Stockholder*
 10 *Derivative Litig.*, No. 14-cv-6414-GHK, 2015 WL 9871275, at *2 (C.D. Cal. Oct.
 11 30, 2015).² Importantly, a “forum-selection clause should be ‘given controlling
 12 weight in all but the most exceptional cases.’” *Atl. Marine*, 571 U.S. at 63 (quoting
 13 *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 33 (1988)). Motions to transfer
 14 pursuant to such a clause should be granted “unless extraordinary circumstances
 15 unrelated to the convenience of the parties clearly disfavor a transfer.” *Id.* at 52.

16 **B. The Forum-Selection Clause Is Part of a Valid Agreement**
 17 **Encompassing Plaintiff’s Claims for Relief**

18 **1. Plaintiff Had, at Minimum, Constructive Notice of the**
 19 **Forum-Selection Clause**

20 Because Plaintiff did not have to affirmatively click a button assenting to the
 21 terms in the Program and Delivery Details, the parties’ agreement is considered
 22 “browsewrap.” *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1176 (9th Cir.
 23 2014). “[T]he determination of the validity of the browsewrap contract depends on
 24 whether the user has actual or constructive knowledge of a website’s terms and
 25 conditions.” *Id.* If Plaintiff had actual notice, the inquiry ends there. If Plaintiff
 26 denies actual notice, the Court then considers “whether the website puts a
 27 reasonably prudent user on inquiry notice of the terms of the contract.” *Id.* at 1177.

28 ² The moving party must submit a declaration to establish facts in support of these factors. See
 e.g., *Bromlow v. D & M Carriers, LLC*, 438 F. Supp. 3d 1021, 1026 (N.D. Cal. 2020).

1 This analysis “depends on the design and content of the website and the
2 agreement’s webpage.” *Id.*

3 Here, Plaintiff had, at minimum, constructive knowledge of the Program
4 Details containing the forum-selection clause mandating resolution of any disputes
5 in courts located in New York County, New York. As described above, in order to
6 place the orders for the subscriptions at issue in this case, Plaintiff navigated
7 through a series of webpages. First, Plaintiff was presented with an initial offer
8 page displaying a number of publications Plaintiff could select and add to his cart
9 based on available airline miles. Dart Decl., ¶ 6; **Ex. B** at 2. After adding the
10 desired subscriptions to his cart, Plaintiff was required to scroll to the bottom of the
11 page and click the “Checkout” button in order to proceed to checkout. *Id.*
12 Immediately below that “Checkout” button are several prominent hyperlinks,
13 including Synapse’s Program and Delivery Details hyperlink. The same links are
14 also conspicuously displayed immediately below the “Place Order” button on the
15 customer checkout page. *Id.*, ¶ 6; **Ex. B** at 5, 6-8.

16 As noted above, clicking on the hyperlink to Synapse’s Program and
17 Delivery Details sends the customer to Synapse’s Program Details webpage, which
18 contains both the customer’s assent to the Terms of Use by use of the MagsforMiles
19 website and the forum-selection clause governing any disputes. *Id.*, ¶ 8; **Ex. B** at
20 10.

21 In *Nguyen*, the Ninth Circuit declined to enforce an arbitration agreement
22 contained in text accessible via a hyperlink located near the checkout button. 763
23 F.3d at 1179. Here, however, the circumstances differ in several important ways.

24 First, Plaintiff’s claims are entirely premised on the contention that Synapse
25 failed to *deliver* the print publications he ordered and instead substituted delivery of
26 alternative digital titles. Thus, whatever Synapse had to say about the details of
27 publication delivery would obviously have been material to Plaintiff’s decision to
28

1 enter into a contract with Synapse for the delivery of magazines. His claims,
2 therefore, effectively concede that the specifics of the Synapse “Program and
3 *Delivery Details*” were material to his agreement with Synapse. Accordingly, a
4 reasonably prudent consumer in Plaintiff’s position would have been motivated to
5 click on a hyperlink entitled “Program and Delivery Details” in order to ensure that
6 he fully understood and appreciated the terms governing the delivery of the
7 magazine titles he had chosen. In contrast, the claims of the plaintiff in *Nguyen* had
8 nothing to do with the details of delivery; rather, claimed injury was the
9 cancellation of his order altogether. *See* 763 F.3d at 1173.

10 Second, Plaintiff placed orders on *nine* separate occasions in the relevant
11 time frame and encountered the hyperlink to the Program and Delivery Details a
12 minimum of eighteen times in the process of placing those orders. Dart Decl., ¶ 7.
13 In contrast, *Nguyen* a one-time product purchase. *See* 763 F.3d at 1173. A
14 reasonably prudent consumer who considered the specifics of delivery to be
15 material to the transaction was at minimum on constructive notice of the applicable
16 terms where he came across the relevant link no less than eighteen times.

17 Finally, the defendant in *Nguyen* sought to enforce an arbitration agreement,
18 which is subject to a higher standard than other contractual provisions with respect
19 to manifestation of assent. *See, e.g., Knutson v. Sirius XM Radio Inc.*, 771 F.3d 559,
20 566 (9th Cir. 2014) (“This principle of knowing consent applies with particular
21 force to provisions for arbitration.”). No such heightened standard applies to forum
22 selection clauses, which are “given controlling weight in all but the most
23 exceptional cases.” *Atl. Marine*, 571 U.S. at 63.

24 For these reasons, Plaintiff had at least constructive, if not actual, knowledge
25 of the Program and Delivery Details where he received a notice, with hyperlinks, of
26 the terms of Synapse’s MFM program offered, prominently displayed beneath both
27 the “Checkout” and “Place order” buttons used to process his order of the Print

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1 Publications. As such, the Program and Delivery Details were part of the agreement
2 Plaintiff acknowledged and assented to when he placed his orders, and the choice-
3 of-law and forum-selection clauses contained therein bound Plaintiff to litigate this
4 matter in New York courts, under New York law.

5 **2. Plaintiff Admits That He Entered into the Relevant Contract
6 with Synapse**

7 “Factual assertions in pleadings … are considered judicial admissions
8 conclusively binding on the party who made them.” *Am. Title Ins. Co. v. Lacelaw
9 Corp.*, 861 F.2d 224, 226 (9th Cir. 1988). Here, Plaintiff’s FAC affirmatively
10 pleads that he “entered a contract with Defendant, whereby Defendant offered
11 [him] certain magazines in print publication format in exchange for a certain
12 amount of Miles from Plaintiff.” FAC, ¶ 78. Plaintiff complains that he did not
13 receive the publication delivery to which he was entitled. *Id.*, ¶ 80. In so
14 complaining, he concedes that the specific details of the publication delivery were
15 material to his transaction with Synapse. Those delivery details are set out in the
16 Program and Delivery Details. Plaintiff, therefore, effectively admits that the
17 Program and Delivery Details are part of a valid contract between himself and
18 Synapse. As a corollary to this admission, the forum-selection clause in the
19 Program and Delivery Details is enforceable.

20 **3. The Forum-Selection Clause Is Reasonable**

21 A forum-selection clause is “prima facie valid and should be enforced unless
22 enforcement is shown by the resisting party to be ‘unreasonable’ under the
23 circumstances.” *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972). The
24 “unreasonableness” exception to enforcement of a forum-selection clause is
25 narrowly construed. *Argueta v. Banco Mexicano, S.A.*, 87 F.3d 320, 325 (9th Cir.
26 1996) (holding forum-selection clause not unreasonable and therefore enforceable).
27 A forum-selection clause is only unreasonable: “(1) if the inclusion of the clause in
28

1 the agreement was the product of fraud or overreaching; (2) if the party wishing to
2 repudiate the clause would effectively be deprived of his day in court were the
3 clause enforced; and (3) if enforcement would contravene a strong public policy of
4 the forum in which suit is brought.”); *Richards v. Lloyd’s of London*, 135 F.3d
5 1289, 1294 (9th Cir.1998) (quoting *M/S Bremen*, 407 U.S. at 12-18) (internal
6 quotations omitted). Plaintiff cannot show that any these factors are present in this
7 case.

- a) The forum-selection clause is not the result of fraud or overreaching

10 Plaintiff has no basis to assert that his consent to the forum-selection clause
11 itself is the result of fraud or overreaching. *See Scherk v. Alberto-Culver Co.*, 417
12 U.S. 506, 519 n.14 (1974); *Mazzola v. Roomster Corp.*, No. 10-CV-5954-AHM-
13 JCGX, 2010 WL 4916610, at *2 (C.D. Cal. Nov. 30, 2010). To demonstrate fraud,
14 “Plaintiff must prove that the forum selection clause itself—not the Agreement as a
15 whole—is the product of fraud or overreaching.” *Id.* (citing *Scherk*, 417 U.S. at
16 519 n.14). “[S]imply alleging that one was duped into signing the contract is not
17 enough.” *Richards*, 135 F.3d at 1297.

18 Plaintiff's FAC makes no allegation that the forum-selection clause itself is
19 the product of fraud or overreaching, nor can it. When he ordered the subscriptions
20 to the Print Publications online, Plaintiff was provided with hyperlinks to the
21 Program and Delivery Details immediately below the buttons prompting him to
22 "Checkout" and "Place order." *See* Dart Decl., ¶ 6; **Ex. C** at 2-3. Clicking on the
23 hyperlink displayed the Program and Delivery Details in their entirety, including
24 the Governing Law and Jurisdiction section containing the forum-selection clause.
25 *Id.*, **Ex. C** at 10.

26 Nor can Plaintiff avoid the forum-selection clause by claiming he had no
27 opportunity to negotiate it. *See, e.g., Carnival Cruise Lines, Inc.*, 499 U.S. at 593

1 (“[A] nonnegotiated forum-selection clause in a form ticket contract [is not invalid]
2 simply because it is not the subject of bargaining.”); *Bennett v. Hosting.com, Inc.*,
3 No. C-08-3792 SC, 2008 WL 4951020, at *2 (N.D. Cal. Nov. 18, 2008) (“Under
4 federal law, neither a power differential between the parties nor the non-
5 negotiability of the contract is a sufficient reason to set aside the forum selection
6 clause.”) (citing *Murphy v. Schneider Nat'l, Inc.*, 362 F.3d 1133, 1141 (9th Cir.
7 2004)).

8 Accordingly, there are no grounds to invalidate the forum-selection clause as
9 the product of fraud or overreaching.

10 **b) The forum-selection clause does not deny Plaintiff an
11 effective forum**

12 Plaintiff cannot demonstrate that the forum-selection clause in the parties’
13 contract would deny him an effective forum for his claims. The contractual forum is
14 the “state and federal courts located in New York County, New York.” Dart Decl.,
15 ¶ 9; Ex. C at 10. A federal court in the Southern District of New York is fully
16 capable of hearing and adjudicating Plaintiff’s case. Indeed, Plaintiff brings his
17 breach of contract claim on behalf of a putative nationwide class encompassing
18 consumers residing in New York, among other states.

19 In any event, parties to a forum-selection clause “waive the right to challenge
20 the preselected forum as inconvenient or less convenient for themselves or their
21 witnesses, or for their pursuit of the litigation.” *See Atl. Marine*, 571 U.S. at 64.
22 Accordingly, any inconvenience Plaintiff might claim from litigating this case in
23 New York is simply not relevant here.

24 **c) Enforcing the forum-selection clause would not violate
25 public policy**

26 Enforcing the forum-selection clause in the parties’ contract would not
27 violate the public policy of California. To the contrary, “strong public policy [in
28 California] supports the enforcement of forum selection clauses.” *E. & J. Gallo*

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT’S MOTION TO TRANSFER
VENUE

1 *Winery v. Andina Licores S.A.*, 440 F. Supp. 2d 1115, 1126 (E.D. Cal. 2006); see
2 also *Meras Engineering, Inc. v. CH2O, Inc.*, No. 11-cv-0389, 2013 WL 146341, at
3 *11 (N.D. Cal. Jan. 14, 2013) (“California law, like federal law, generally favors
4 the enforcement of forum selection clauses.”).

5 Because Plaintiff cannot demonstrate that the forum-selection clause is
6 unreasonable under any of the factors articulated by the Supreme Court, the clause
7 is valid and enforceable, and the case should be transferred to the Southern District
8 of New York.

9 **4. The Forum-Selection Clause Applies to Plaintiff’s Claims**

10 Once the Court determines that a valid forum-selection clause exists, it must
11 consider whether the dispute at issue falls within the scope of the clause. *Moretti v.*
12 *Hertz Corp.*, No. 13-cv-02972-JSW, 2014 WL 1410432, at *3 (N.D. Cal. Apr. 11,
13 2014). “[T]he scope ... of a forum selection clause is a matter of contract.” *Polar*
14 *Shipping Ltd. v. Oriental Shipping Corp.*, 680 F.2d 627, 632 (9th Cir. 1982).

15 Here, the parties’ contract provides that “[a]ny disputes arising under these
16 Program Details and Terms of Use [are subject to] the exclusive jurisdiction of the
17 state and federal courts located in New York County, New York for any such
18 purposes.” Dart Decl., ¶ 9; Ex. C at 10. Plaintiff’s allegations demonstrate that this
19 dispute falls within the scope of this broadly worded forum-selection clause.

20 The Program Details’ Vendor Information provision states that “[t]he vendor
21 and its partners reserve the right at any time and without notice to limit, refuse,
22 cancel, modify, restrict, or terminate orders.” Dart Decl., Ex. B at 10. Plaintiff’s
23 breach of contract claim, which directly challenges Synapse’s contractual right to
24 terminate print publication of the magazines he ordered and offer him digital
25 publication alternatives, plainly falls within the scope the forum-selection clause.
26 Because Plaintiff’s CLRA, UCL, FAL, and unjust enrichment claims arise from the
27 same factual allegations as his breach of contract claim, they, too, fall squarely

28

1 within the scope of “any disputes” arising under the Program Details. *See, e.g.*,
2 *Moretti*, 2014 WL 1410432, at *3 (holding that claims for false advertising and
3 fraud related to rental cars fell within forum-selection clause governing disputes
4 arising or relating to terms of service).

5 **C. Public-Interest Factors Favor Enforcement**

6 Once the validity and applicability of a forum-selection clause are
7 established, *Atlantic Marine* dictates that the usual analysis involving balancing of
8 plaintiff’s choice of forum and other private interests should be disregarded, and
9 that “a district court may consider arguments about public-interest factors only.”
10 571 U.S. at 63-64; *In re CytRx Corp.*, 2015 WL 9871275, at *2 (“If the forum-
11 selection clause is valid, we determine only whether the *forum non conveniens*
12 public-interest factors militate against its enforcement.”) (citing *Atl. Marine*, 571
13 U.S. at 63-65). These factors include “the administrative difficulties flowing from
14 court congestion; the local interest in having localized controversies decided at
15 home; and the interest in having the trial of a diversity case in a forum that is at
16 home with the law.” *Atl. Marine*, 571 U.S. at 62, n. 6 (internal quotations omitted).
17 “Because those factors will rarely defeat a transfer motion, the practical result is
18 that forum-selection clauses should control except in unusual cases.” *Id.* at 64. As
19 the party challenging enforcement of the forum-selection clause, Plaintiff “must
20 bear the burden of showing that public-interest factors overwhelmingly disfavor a
21 transfer.” *Id.* at 67.

22 There are no plausible public-interest factors here that would preclude
23 transfer to New York. For one, there are no greater administrative difficulties
24 flowing from court congestion in the Southern District of New York than in the
25 Central District of California. *See, e.g.*, *In re CytRx Corp.*, 2015 WL 9871275, at *6
26 (granting motion to transfer where, *inter alia*, the parties “do not argue that either
27 this court or the Delaware Court of Chancery faces administrative difficulties in

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1 handling this case or that one court would try the case faster than the other"); *Gates*
2 *v. Learjet Corp. v. Jensen*, 743 F.2d 1325, 1337 (9th Cir.1984) (regarding
3 administrative difficulties, "the real issue is ... whether a trial may be speedier in
4 another court because of its less crowded docket").

5 Nor is there a compelling local interest in having this controversy decided "at
6 home." "California has little interest in keeping the litigation in this state to deter
7 future wrongful conduct" where, as here, the defendant corporation is located out of
8 state. *Moretti v. Hertz Corp.*, No. 13-cv-02972-JSW, 2014 WL 1410432, at *3
9 (N.D. Cal. Apr. 11, 2014) (quoting *Guimei v. Gen. Elec. Co.*, 172 Cal. App. 4th
10 689,703 (2009)); *cf. Carijano v. Occidental Petroleum Corp.*, 643 F.3d 1216, 1232
11 (9th Cir. 2011) ("[T]he local interest factor weighs in favor of a California forum
12 where a California plaintiff is suing a California defendant over conduct that took
13 place in the state.") (emphasis added).

14 As to the third factor, Plaintiff cannot demonstrate that California has an
15 interest in having the trial of a diversity case in a forum that is "at home with the
16 law" because as explained above, Plaintiff's claims should be adjudicated under
17 New York law due to the choice-of-law provision in the parties' contract. *See, e.g.*,
18 *Int'l Chem. Supplies (ICS), Inc. v. Restoration Energy, LLC*, 2015 WL 4602664, at
19 *3 (E.D.Cal. July 29, 2015) ("The New York state courts are indisputably more 'at
20 home' with New York state law than this Court.").

21 Accordingly, the forum-selection clause controls, and Plaintiff cannot meet
22 his heavy burden of demonstrating exceptional circumstances warranting denial of
23 Synapse's motion on public-interest grounds. *See Atl. Marine*, 571 U.S. at 63-64.

24 **IV. CONCLUSION**

25 For the foregoing reasons, Synapse respectfully requests that the Court grant
26 its Motion to Transfer this matter to the United States District Court for the
27 Southern District of New York.

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1 Dated: May 30, 2023

ARENTOX SCHIFF LLP

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By: /s/ Sara T. Schneider

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John S. Purcell
Sara T. Schneider
Jessica B. Do

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Attorneys for Defendant
SYNAPSE GROUP, INC. d/b/a
MAGSFORMILES and
MAGSFORPOINTS

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